Supreme Court, U.S.
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No. 98-1480

In The

Supreme Court of the United States

ROBERT A. BECK, II,

Petitioner,

vs.

RONALD M. PRUPIS, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

In their Opposition Brief, Respondents, Leonard Bellezza, William Paulus, Jr., Harry Olstein and Ernest J. Sabato (the "Bellezza Group"), do not dispute that there is a sharp conflict among the circuits as to the question presented by the Petition, nor do they dispute that the question is important and ripe for resolution. The Bellezza Group instead seeks to deter resolution of this important question by re-writing, consistent with its view of the case, the factual findings made by the Eleventh Circuit, and distorting what it labels the "minority view" to argue that, even under that view, Petitioner, Robert A. Beck, II ("Beck"), would not prevail. This is simply not so.

The record on the summary judgment before, first, the United States District Court for the Southern District of Florida and then the Eleventh Circuit was substantial, consisting of hundreds of exhibits presented by both parties. The Eleventh Circuit reviewed the record, including those exhibits, and then, resolving conflicts in favor of Beck, as the non-movant, made the factual findings contained in its December 15, 1988 opinion (App. 2-4 of Petition). Beck did not alter those facts in his Petition. Instead, the Petition quoted and relied on the pertinent findings of the Eleventh Circuit. The holding challenged by Beck is premised on those findings.

The Bellezza Group ignores those findings, and cites (in many cases, inaccurately) some of the exhibits it presented, mischaracterizes some of the evidence presented by Beck, attacks other evidence as "incompetent", and avoids other substantial evidence. This Reply Brief will decline the invitation to engage in repeating the analysis

of the factual disputes made to the lower courts. The unusual situation of the respondent challenging the factual findings of the circuit court does not alter the Eleventh Circuit's opinion, which rejects these factual arguments. If this were not controlling, no petition would ever be granted, as the crucial facts could just be re-characterized by the respondents.[1]

The Bellezza Group even goes so far as to argue that this case is not appropriate to resolve the question presented because it is in the context of a summary judgment, as opposed to a motion to dismiss. This argument defies logic. This case has a fully developed summary judgment record, which the district and appellate courts reviewed, making findings which, according to the Eleventh Circuit, leave the case "hinging" on the resolution of the one question presented here. This situation actually presents an advantage over a case disposed of on a motion to dismiss, where the pleadings are taken as true, but there has been absolutely no analysis as to whether

[1] One of the findings attacked by the Bellezza Group, for example, is that the conspiracy was over prior to Beck's refusing to cooperate with and blowing the whistle on the illegal conduct. As noted, however, the illegal conduct continued for almost two years after Beck's termination, until the bankruptcy of Southeastern Insurance Group, Inc. Moreover, the fact and manner of Beck's termination were designed not only to eliminate the threat to the continued RICO conduct, but also to discredit Beck. Thus, this and the other factual attacks are misplaced: Beck's termination was an overt act in furtherance of the RICO conspiracy. As the Eleventh Circuit stated, this case "hinges" (which can only mean that it goes one way or the other) on the resolution of the question presented in Beck's Petition.

the plaintiff can present any evidence to support its claims. Beck has presented sufficient evidence to allow the Eleventh Circuit to make the findings in its opinion. If this Petition were accepted and the summary judgment reversed, all that would remain would be the trial of the case.

Next, the Bellezza Group tries to re-write what it labels the "minority view", arguing that under it, while an overt act that injures a plaintiff need not be a RICO predicate act, it still must be a "wrongful" act. Not one of the decisions from the Third, Fifth or Seventh Circuits holds this. *See Khurana v. Innovative Health Care Systems, Inc.*, 130 F.3d 143 (5th Cir. 1997), *cert. granted, judgment vacated as moot*, ___ U.S. ___, 119 S.Ct. 442 (1998); *Rehkop v. Berwick Healthcare Corp.*, 95 F.3d 285, 290 (3d Cir. 1996); *Gagan v. Am. Cablevision, Inc.*, 77 F.3d 951, 958-59 (7th Cir. 1996); *Schiffels v. Kemper Fin. Servs., Inc.*, 978 F.2d 344 (7th Cir. 1992); *Shearin v. E.F. Hutton Group, Inc.*, 885 F.2d 1162 (3d Cir. 1989). Rather, they hold that an employee who is terminated for refusing to participate in or for blowing the whistle on a RICO conspiracy has been injured by reason of an overt act in furtherance of the RICO conspiracy and, accordingly, may sue under Section 1962(d). *Id.* Furthermore, such a "wrongful" overt act requirement would turn traditional conspiracy law on its head. *See, e.g., Yates v. United States*, 354 U.S. 298, 334 (1957) (overt act need not be criminal in nature and is "simply to manifest 'that the conspiracy is at work' "), *rev'd on other grounds, Burks v. United States*, 437 U.S. 1 (1978); *American Tobacco Co. v. United States*, 328 U.S. 781, 809 (1946) (under conspiracy provision of Sherman Antitrust Act, overt acts in furtherance of a conspiracy "may be in themselves

wholly innocent acts."). Last, regardless, Beck's termination was, in fact, "wrongful."

The Eleventh Circuit could not have been more clear in establishing the one and only controlling question presented by the Petition, in beginning its opinion as follows:

> This case **hinges** on the following question: Must a plaintiff bringing a civil RICO conspiracy claim prove that the overt act (in furtherance of the conspiracy) by which he was injured was an "act of racketeering"? (emphasis added)

The Bellezza Group's Opposition Brief tries to change this inalterable fact, but cannot. This is the appropriate case to resolve the sharp conflict between the circuits on this important question.

Respectfully submitted,

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